

SENATE BILL No. 12

DIGEST OF INTRODUCED BILL

Citations Affected: IC 28-1-2-30.6; IC 34-30-2-119.9; IC 35-46-1-12.

Synopsis: Financial crimes against the elderly. Permits a financial institution to release certain financial records to a law enforcement agency or adult protective services unit if the financial institution reasonably suspects illegal activity in connection with the account, and provides immunity to a financial institution that releases, or does not release, this information. Permits a court to order a person convicted of exploitation of a dependent or endangered adult to disgorge all or some of any property the person received as the result of the death of the dependent or endangered adult. Urges the general assembly to assign the topic of adult protective services to a study committee during the 2016 legislative interim. (The introduced version of this bill was prepared by the study committee on corrections and criminal code.)

Effective: July 1, 2016.

Young R Michael

January 5, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 12

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 28-1-2-30.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]: **Sec. 30.6. (a) The following definitions apply throughout**
4 **this section:**

5 (1) "Adult protective services unit" has the meaning set forth
6 in IC 12-10-3-1.

7 (2) "Endangered adult customer" means an individual:

8 (A) at least eighteen (18) years of age;

9 (B) who, in the good faith belief of a financial institution,
10 is incapable by reason of mental illness, intellectual
11 disability, dementia, or other physical or mental
12 incapacity, of managing or directing the management of
13 the individual's property; and

14 (C) who uses any service of a financial institution or for
15 whom the financial institution acts as a fiduciary.

16 (3) "Law enforcement agency" has the meaning set forth in
17 IC 35-47-15-2.



1 (b) A financial institution may release the personal or financial
 2 records relating to an endangered adult customer's account to an
 3 adult protective services unit or a law enforcement agency, or both
 4 if:

- 5 (1) the endangered adult customer has an ownership interest
 6 or a beneficial interest in the account, in whole or in part; and
 7 (2) the financial institution reasonably suspects that illegal
 8 activity has taken place, or is or will be taking place, in
 9 connection with the account.

10 (c) A financial institution, and the director, officer, manager,
 11 employee, or agent of a financial institution, who, in good faith,
 12 releases or does not release the personal or financial records of a
 13 person in accordance with this section, is not liable to any person
 14 under any law or regulation of the United States, under any law or
 15 regulation of any state or a political subdivision of any state, or
 16 under any contract or other legally enforceable agreement,
 17 including an arbitration agreement, for a release of records
 18 described in this section, or for failing to release records described
 19 in this section.

20 SECTION 2. IC 34-30-2-119.9 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2016]: **Sec. 119.9. IC 28-1-2-30.6 (Concerning**
 23 **the release of or failure to release financial records of an**
 24 **endangered adult customer of a financial institution).**

25 SECTION 3. IC 35-46-1-12, AS AMENDED BY P.L.158-2013,
 26 SECTION 556, IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) Except as provided in
 28 subsection (b), a person who recklessly, knowingly, or intentionally
 29 exerts unauthorized use of the personal services or the property of:

- 30 (1) an endangered adult; or
 31 (2) a dependent eighteen (18) years of age or older;

32 for the person's own profit or advantage or for the profit or advantage
 33 of another person commits exploitation of a dependent or an
 34 endangered adult, a Class A misdemeanor.

35 (b) The offense described in subsection (a) is a Level 6 felony if:

- 36 (1) the fair market value of the personal services or property is
 37 more than ten thousand dollars (\$10,000); or
 38 (2) the endangered adult or dependent is at least sixty (60) years
 39 of age.

40 (c) Except as provided in subsection (d), a person who recklessly,
 41 knowingly, or intentionally deprives an endangered adult or a
 42 dependent of the proceeds of the endangered adult's or the dependent's



benefits under the Social Security Act or other retirement program that the division of family resources has budgeted for the endangered adult's or dependent's health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

(d) The offense described in subsection (c) is a Level 6 felony if:

(1) the amount of the proceeds is more than ten thousand dollars (\$10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(e) It is not a defense to an offense committed under subsection (b)(2) or (d)(2) that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

(f) It is a defense to an offense committed under subsection (a), (b), or (c) if the accused person:

(1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and

(2) was acting within the scope of the accused person's fiduciary responsibility.

(g) In addition to any penalty imposed under IC 35-50-2, including an order of restitution, the court may order a person convicted of an offense under this section that is committed against an endangered adult or dependent to disgorge all or some of the property received from the endangered adult or dependent as a result of the endangered adult's or dependent's death, regardless of whether the property was received as a direct or indirect result of the offense. The court may order the property distributed to the surviving beneficiaries:

(1) subject to the terms of any will, trust, or other instrument transferring the property;

(2) on a pro rata basis; or

(3) in another equitable manner that serves the interest of justice.

SECTION 4. [EFFECTIVE JULY 1, 2016] (a) The general assembly urges the legislative council to assign to an appropriate study committee for study during the 2016 legislative interim the topic of adult protective services, including the appropriate funding for adult protective services.

(b) This SECTION expires November 1, 2016.

